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CONFLICTS COUNSEL TO
THE DEBTORS AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

Senior Care Centers, LLC, *et al.*,¹

Debtors.

§
§
§
§
§

CASE NO. 18-33967 (BJH) -11

(Jointly Administered)

**MOTION TO APPROVE AGREEMENTS FOR (I)
USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION
BETWEEN CERTAIN SENIOR CARE CENTERS DEBTORS AND
KEYBANK N. A., (III) MODIFYING THE AUTOMATIC STAY AND (IV)
GRANTING RELIEF RELATED TO USE OF KEYBANK N.A.'S
CASH COLLATERAL PURSUANT TO RULE 4001(d)(1)(A)(i),(iii) and (iv)**

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A
WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED
STATES BANKRUPTCY COURT 1100 COMMERCE STREET, ROOM
1254, DALLAS, TEXAS 75242 NO LATER THAN FEBRUARY 20, 2019.**

¹ A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as Exhibit A. The Debtors' mailing address is 600 North Pearl Street, Suite 1100, Dallas, Texas 75201. The Debtors which are bringing this Motion are listed in Exhibit A by appearing in a larger bold font than the other Debtors.

ANY OBJECTION OR RESPONSE MUST BE IN WRITING AND FILED WITH THE CLERK, AND A COPY MUST BE SERVED UPON THE MOVANT AND KEYBANK PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED, A HEARING WILL BE HELD REGARDING SAME AT THE OMNIBUS HEARING DATE SET IN THIS CASE ON FEBRUARY 21, 2019 AT 2:00 P.M. BEFORE THE HONORABLE DOUGLAS DODD AT THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, 14TH FLOOR, COURTROOM NO. 2, DALLAS, TEXAS 75242.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

The applicable debtors and debtors in possession who are represented by proposed conflicts counsel as to issues regarding KeyBank National Association (hereinafter the “**KeyBank-Debtors**”²) file this *Motion to Approve Agreements for Use of Cash Collateral and Adequate Protection Between Certain Senior Care Centers Debtors and KeyBank National Association Pursuant to Rule 4001(d)(1)(A)(i) and (iv)* (the “**Motion**”) and seek the entry of an Agreed Order and Findings of Fact, in the form attached hereto as Exhibits B-1 and B-2 (the “**Proposed Orders**”), pursuant to sections 105(a), 361, 362 and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 4001(d)((1)(A)(i) and (iv) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

² KeyBank Debtors are as defined in the Findings of Fact and Conclusions of Law attached as Exhibit B-2 as: (a) PM Management – Killeen I NC, LLC [Case No. 18-33984]; (b) PM Management – Killeen II NC, LLC [Case No. 18-33985]; (c) PM Management – Killeen III NC, LLC [Case No. 18-33986]; and (d) newly filed PM Management – Portfolio VIII NC, LLC [Case No. 19-30252].

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Application under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). The KeyBank-Debtors consent to entry of a final order under Article III of the United States Constitution.

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 361, 362 and 363 and Bankruptcy Rules 4001(d)(A)(1)(i), (iii) and (iv).

BACKGROUND

4. On December 4, 2018, the operating KeyBank-Debtors and on January 29, 2019 (the “**Petition Dates**”) the holding company KeyBank Debtor, along with five other entities, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code as (the “**Chapter 11 Cases**”).

5. The factual background regarding the then filing KeyBank Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail as part of the First Day Declaration and fully incorporated herein by reference.

6. All of the KeyBank-Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

7. No trustee or examiner has been requested in the Chapter 11 Cases.

8. On December 14, 2018, the Office of the United States Trustee for the Northern District of Texas appointed an official committee of unsecured creditors in these Chapter 11 Cases (the “**Committee**”).

FACTS RELEVANT TO THE MOTION

9. Three of the KeyBank Debtors are operators of senior care facilities known as The Rosewood Retirement Community, Indian Oaks Living Center, and Hill Country Rehab and Nursing Center. These KeyBank Debtors sublease those facilities from the remaining and newest KeyBank Debtor, PM Management – Portfolio VIII NC, LLC, as the “Master Tenant” who in turn has leased the facilities from their owners, HC-RW Associates, Ltd., H-C Associates, Ltd., and HC Hill Country Associates, Ltd. (collectively, the “**KeyBank Borrowers**”).

10. Each of the KeyBank Borrowers are indebted to KeyBank, in varying degrees, under the terms of loans which are secured by, among other things, mortgages and liens against the facilities, and assignments of the rents, leases, and revenue from the KeyBank Debtors, as well as security agreements by the Subtenants in, among other things, all (i) fixtures, furniture, equipment, and other goods and tangible personal property, (ii) licenses, permits, government receivables accounts, government payments and other healthcare assets, (iii) funds, monies, securities whether in escrow, lock boxes, depository, blocked accounts, or otherwise, (iv) accounts, accounts receivable, general intangibles, chattel paper, instruments, rights to payment, inventory, goods, cash, cash proceeds, bank accounts, deposit accounts, (v) all security or other deposits; and (vi) all products and proceeds of the foregoing (as further defined and described in the Lease and Security Documents).

11. The KeyBank Debtors are generally obligated under the master lease agreement, sublease agreements, security agreements, instruments, operator and regulatory referenced in the Findings of Fact and Conclusions of Law attached as Exhibit “B-2” (collectively, the “**Lease and Security Documents**”).

12. Upon the Chapter 11 filing of the operating KeyBank Debtors, it was ascertained that: a) KeyBank's heretofore status as the holder of a perfected interest in the operating KeyBank Debtors deposit accounts by means of a control account, had lapsed due to a change, some time prior to the Petition Date, to another banking entity; b) that KeyBank nevertheless had, as of the Petition Date and thereafter, superior position with regard to all of the KeyBank Debtor assets that generated cash collateral and KeyBank had proceeds based perfection on cash as it was collected by the applicable KeyBank Debtors; and c) while the lead Debtor's cash management system swept all deposits from all deposit account of the operating KeyBank Debtors into centralized accounts along with multiple other funds from other Debtor's operation, the Debtors' principal lender, CIBC Bank USA ("CIBC"), CIBC did not have any of the operating KeyBank Debtors as borrowers on its many and varied documents governing its relationship with the Debtors in general, making the KeyBank Debtors' operations generally not part of CIBC and the Debtors' borrowing base calculations. Nevertheless, pre-petition the KeyBank Debtors' lease payments were timely met and funds flowed in the Debtors' cash management system with CIBC without any functional hitches.

13. But the filing of the KeyBank Debtors' Bankruptcy Cases caused these shortcomings to come to light, initially by means of KeyBank's *Limited Objection of KeyBank National Association to Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Setting a Final Hearing, and (V) Granting Related Relief* [DKT #155] and thereafter by informal document exchanges between Conflicts Counsel, counsel for KeyBank and counsel for CIBC. Additionally, the Official Unsecured Creditors' Committee's counsels were involved

in earlier drafts of these agreements, other matters had justifiably taken their attention elsewhere, but the latest versions have been sent to the Committee for review (*See* certificate of conference). The noted issues and means to resolve the issues raised, while keeping the KeyBank Debtors' operations unfazed, were sufficiently worked out by and between those parties (with the caveat that minor to be noticed revisions may occur), resulting in the filing of this Motion.

Substance of the Agreements to Provide Adequate Protection

14. The KeyBank Debtors and KeyBank have agreed, with CIBC participating in the drafting process regarding Exhibits B-1 and B-2, to terminate the pre-petition sweep of the KeyBank Debtors' CIBC account into the Debtors' main cash management system as of January 23, 2019 and to provide that the KeyBank Debtors may continue to use cash collateral to pay the entities' ordinary course operating expenses including lease expenses, as well as, KeyBank Debtor's manually funding their collective proportionate share of obligations that are otherwise administered through other accounts in the Debtors' cash management system or are otherwise centralized systemwide costs for Debtor's operations and are not collectively paid at the KeyBank Debtor level, with all excess cash to otherwise remain in each KeyBank Debtor to otherwise remain in that KeyBank Debtor's CIBC account(s).

15. The balance of the agreement details generally accepted stipulations made in a cash collateral usage context as to the KeyBank Debtors not challenging the extent, validity or priority of KeyBank's liens and claims (while third parties such as the Committee are given time frames to mount any challenges to those positions). Additionally, standard notice, reporting and default provisions, the latter such as failing to make lease payments when due, within grace periods provided, as well as other standards such as trustee or examiner appointments, using cash

collateral outside the terms of the agreements, seeking an order to modify, reverse or amend these order based agreements or seeking to reject the underlying leases or other transition events without KeyBank's approval or that are not in a form acceptable to KeyBank. Please specifically see paragraph 8 of Exhibit B-1 for complete details. The automatic stay is modified to allow KeyBank to exercise remedies generally available to them as to any uncured defaults. Moreover, nothing in the agreements affects HUD's rights noted in paragraph 14 of Exhibit B-1.

WHEREFORE, PREMISES CONSIDERED, the KeyBank Debtors and KeyBank respectfully request that this Court (i) grant the Motion and enter the Agreed Order and Findings of Fact and Conclusions of Law attached hereto as **Exhibits "B-1" and "B-2"** respectively and (ii) grant these parties any such other relief to which they may be justly entitled.

DATED: February 6, 2019

Respectfully submitted,

/s/ E. P. Keiffer

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*Conflicts Counsel to the Debtors
and Debtors in Possession*

CERTIFICATE OF CONFERENCE

I, E. P. Keiffer, have had numerous telephone conversations and exchanges of e-mails and drafts of the proposed order package detailed in Exhibits B-1 and B-2 to this Motion with: a) counsels for CIBC; b) counsel for HUD; and c) counsels for the Committee prior to filing this Rule 4001(d)(1)(A) motion. As to discussions with CIBC regarding the terms of the proposed order package detailed in Exhibits B-1 and B-2, the provisions detailed in those Exhibits B-1 and B-2 are generally satisfactory to CIBC, subject to revisions and agreement as to the payment of centralized expenses. Discussions with CIBC as to appropriate provisions relating to centralized expenses are ongoing. As to discussions with HUD, the language HUD requested is in the order package detailed in Exhibits B-1 and B-2 and no objection is expected. Lastly as to the Committee, in addition to sending earlier drafts of the order package detailed in Exhibits B-1 and B-2, this Motion in draft form, the current order package drafts were sent to the Committee on February 4, 2019 and February 6, 2019 prior to the filing of this Motion. The Committee may have some minor revisions that will likely be acceptable to the principal parties herein that would modify the text of the order package detailed in Exhibits B-1 and B-2. Nevertheless, nothing in this certificate of conference is intended to prevent or prohibit any of those parties from filing an objection if any issues that arise are not resolved amicably prior to the objection deadline noted.

/s/ E. P. Keiffer

E. P. Keiffer

Exhibit A

(Sorted Alphabetically)

#	Debtor Name	Case No.	EIN
1.	Alief SCC LLC	18-33987	0523
2.	Bandera SCC LLC	18-33989	0617
3.	Baytown SCC LLC	18-33992	0778
4.	Beltline SCC LLC	18-33996	7264
5.	Booker SCC LLC	18-33999	0967
6.	Bossier SCC LLC	18-34003	2017
7.	Bradford SCC LLC	18-34004	9535
8.	Brinker SCC LLC	18-34005	7304
9.	Brownwood SCC LLC	18-33968	0677
10.	Capitol SCC LLC	18-34006	1750
11.	CapWest-Texas LLC	18-34008	4897
12.	Cedar Bayou SCC LLC	18-34010	8889
13.	Clear Brook SCC LLC	18-34012	1877
14.	Colonial SCC LLC	18-34014	4385
15.	Community SCC LLC	18-33969	7951
16.	Corpus Christi SCC LLC	18-34016	9807
17.	Crestwood SCC LLC	18-34017	7349
18.	Crowley SCC LLC	18-33970	6697
19.	CTLTC Real Estate, LLC	18-34018	0202
20.	Fairpark SCC LLC	18-34020	7381
21.	Gamble Hospice Care Central LLC	18-34022	6688
22.	Gamble Hospice Care Northeast LLC	18-34025	6661
23.	Gamble Hospice Care Northwest LLC	18-34027	2044
24.	Gamble Hospice Care of Cenla LLC	18-34029	4510
25.	Green Oaks SCC LLC	18-33971	7218
26.	Harbor Lakes SCC LLC	18-33972	7299
27.	Harden HUD Holdco LLC	18-34032	1502
28.	Harden Non-HUD Holdco LLC	18-34035	3391
29.	Harden Pharmacy LLC	18-34036	1995
30.	Hearthstone SCC LLC	<u>18-34037</u>	<u>9154</u>
31.	Hewitt SCC LLC	18-33973	7237
32.	HG SCC LLC	<u>18-34040</u>	<u>7415</u>
33.	Hill Country SCC LLC	18-34043	4199
34.	Holland SCC LLC	18-33974	1427
35.	Hunters Pond SCC LLC	18-34045	2886
36.	Jacksonville SCC LLC	18-34046	4216
37.	La Hacienda SCC LLC	18-34049	1074
38.	Lakepointe SCC LLC	18-34050	7457
39.	Major Timbers LLC	18-34052	7477

#	Debtor Name	Case No.	EIN
40.	Marlandwood East SCC LLC	18-34054	1871
41.	Marlandwood West SCC LLC	18-34058	2192
42.	Meadow Creek SCC LLC	18-34064	9278
43.	Midland SCC LLC	18-34065	4231
44.	Mill Forest Road SCC LLC	18-34066	5137
45.	Mission SCC LLC	18-33975	8086
46.	Mullican SCC LLC	18-34067	7499
47.	Mystic Park SCC LLC	18-34068	1898
48.	Normandie SCC LLC	18-34069	1542
49.	Onion Creek SCC LLC	18-34070	7425
50.	Park Bend SCC LLC	18-34071	9410
51.	Pasadena SCC LLC	18-34072	1694
52.	Pecan Tree SCC LLC	18-34073	4241
53.	Pecan Valley SCC LLC	18-34074	9585
54.	Pleasantmanor SCC LLC	18-34075	7536
55.	PM Management - Allen NC LLC	18-34076	4961
56.	PM Management - Babcock NC LLC	18-34077	7829
57.	PM Management - Cedar Park NC LLC	18-34078	1050
58.	PM Management - Corpus Christi NC II LLC	18-34079	5231
59.	PM Management - Corpus Christi NC III LLC	18-34080	5129
60.	PM Management - Corsicana NC II LLC	18-34081	9281
61.	PM Management - Corsicana NC III LLC	18-34082	9353
62.	PM Management - Corsicana NC LLC	18-34083	1333
63.	PM Management - Denison NC LLC	18-34084	5022
64.	PM Management - El Paso I NC LLC	18-34085	2965
65.	PM Management - Fredericksburg NC LLC	18-34086	0599
66.	PM Management - Frisco NC LLC	18-34087	5082
67.	PM Management - Garland NC LLC	18-33979	5137
68.	PM Management - Golden Triangle NC I LLC	18-33980	9478
69.	PM Management - Golden Triangle NC II LLC	18-33981	9536
70.	PM Management - Golden Triangle NC III LLC	18-33982	9597
71.	PM Management - Golden Triangle NC IV LLC	18-33983	9654
72.	PM Management - Killeen I NC LLC	18-33984	3105
73.	PM Management - Killeen II NC LLC	18-33985	3179
74.	PM Management - Killeen III NC LLC	18-33986	3245
75.	PM Management - Lewisville NC LLC	18-33988	5296
76.	PM Management - New Braunfels NC LLC	18-33990	6293
77.	PM Management - Park Valley NC LLC	18-33991	7186
78.	PM Management - Pflugerville AL LLC	18-33993	4007
79.	PM Management – Portfolio IX NC, LLC	19-30253	1841
80.	PM Management – Portfolio V NC, LLC	19-30249	2086
81.	PM Management – Portfolio VI NC, LLC	19-30250	5354

#	Debtor Name	Case No.	EIN
82.	PM Management – Portfolio VII NC, LLC	19-30251	9728
83.	PM Management – Portfolio VIII NC, LLC	19-30252	3048
84.	PM Management - Portland AL LLC	18-33994	5018
85.	PM Management - Portland NC LLC	18-33995	4928
86.	PM Management - Round Rock AL LLC	18-33997	5304
87.	PM Management – San Antonio AL, LLC	19-30254	4069
88.	PM Management - San Antonio NC LLC	18-33998	1216
89.	Presidential SCC LLC	18-34000	1913
90.	Redoak SCC LLC	18-33976	7569
91.	Riverside SCC LLC	18-34001	1889
92.	Round Rock SCC LLC	18-34002	8936
93.	Rowlett SCC LLC	18-34007	7606
94.	Ruston SCC LLC	18-34009	0242
95.	RW SCC LLC	18-34011	7631
96.	Sagebrook SCC LLC	18-34013	9571
97.	San Angelo SCC LLC	18-34015	4254
98.	San Antonio SCC, LLC	19-30261	4923
99.	SCC Edinburg LLC	18-34019	1195
100.	SCC Hospice Holdco LLC	18-34021	3166
101.	SCC Senior Care Investments LLC	18-34023	4123
102.	SCC Socorro LLC	18-34024	5459
103.	Senior Care Center Management II LLC	18-34026	1280
104.	Senior Care Center Management LLC	18-34028	7811
105.	Senior Care Centers Home Health, LLC	18-34030	1931
106.	Senior Care Centers LLC	18-33967	8550
107.	Senior Rehab Solutions LLC	18-34031	4829
108.	Senior Rehab Solutions North Louisiana LLC	18-34033	1690
109.	Shreveport SCC LLC	18-34034	1659
110.	Solutions 2 Wellness LLC	18-34038	4065
111.	South Oaks SCC LLC	18-34039	8002
112.	Springlake ALF SCC LLC	18-34041	2436
113.	Springlake SCC LLC	18-34042	9102
114.	Stallings Court SCC LLC	18-33977	7393
115.	Stonebridge SCC LLC	18-34044	9234
116.	Stonegate SCC LLC	18-33978	3005
117.	Summer Regency SCC LLC	18-34047	7782
118.	TRISUN Healthcare LLC	18-34048	2497
119.	Valley Grande SCC LLC	18-34051	1341
120.	Vintage SCC LLC	18-34053	7710
121.	West Oaks SCC LLC	18-34055	9535
122.	Western Hills SCC LLC	18-34056	1922
123.	Weston Inn SCC LLC	18-34057	7871
124.	Westover Hills SCC LLC	18-34059	3303

#	Debtor Name	Case No.	EIN
125.	Whitesboro SCC LLC	18-34060	7745
126.	Windcrest SCC LLC	18-34061	9541
127.	Windmill SCC LLC	18-34062	8067
128.	Wurzbach SCC LLC	18-34063	9920